

XAVIER BECERRA  
Attorney General of California  
ANTHONY R. HAKL  
Supervising Deputy Attorney General  
NOREEN P. SKELLY  
Deputy Attorney General  
State Bar No. 186135  
1300 I Street, Suite 125  
P.O. Box 944255  
Sacramento, CA 94244-2550  
Telephone: (916) 210-6057  
Fax: (916) 324-8835  
E-mail: Noreen.Skelly@doj.ca.gov  
*Attorneys for Defendant Attorney General Xavier  
Becerra*

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

**MICHAEL ZELENY, an individual,**

Plaintiff,

v.

**GAVIN NEWSOM<sup>1</sup>, an individual, in his  
official capacity; XAVIER BECERRA, an  
individual, in his official capacity; CITY OF  
MENLO PARK, a municipal corporation;  
and DAVE BERTINI, in his official  
capacity,**

Defendants.

3:17-cv-07357 RS (NC)

**DEFENDANT ATTORNEY GENERAL  
XAVIER BECERRA'S RESPONSES TO  
PLAINTIFF MICHAEL ZELENY'S  
FIRST SET OF INTERROGATORIES<sup>2</sup>**

PROPOUNDING PARTY: Plaintiff Michael Zeleny

ANSWERING PARTY: Defendant Attorney General Xavier Becerra

SET NUMBER: One

<sup>1</sup> Although Edmund G. Brown, Jr., sued in his official capacity as the Governor of California, has been dismissed from this matter, Defendant Becerra updates the caption to substitute Governor Gavin Newsom for former Governor Edmund G. Brown, Jr., pursuant to Rule 25(d)(1) of the Federal Rules of Civil Procedure.

<sup>2</sup> Verification to follow.

## PRELIMINARY STATEMENT

For purposes of these interrogatories, Plaintiff Zeleny has used the terms “YOU” and “YOUR” to, “refer to Xavier Becerra as the Attorney General of the State of California. These interrogatories seek the official position of the State of California.” (Plaintiff Zeleny’s Interrogatories, p. 2, lines 22-24.) Defendant Becerra objects to Plaintiff Zeleny’s definition of “YOU” and “YOUR” as encompassing the official position of the State of California. The phrase “the official position of the State of California” is vague and overbroad. The State of California is made up of the Executive, Legislative, and Judicial branches of government, which are separate and co-equal. California’s Executive branch includes a number of elected officials including, but not limited to the Attorney General of California. Moreover, the State of California is not a defendant in this action—nor would it be an appropriate defendant in this action. As a general matter, the proper respondent or defendant in a challenge to a state law or policy is the officer or agency charged with implementing it. See *Serrano v. Priest*, 18 Cal.3d 728, 752 (1976); *State v. Superior Court*, 12 Cal.3d 237, 255 (1974).

Defendant Becerra objects to each interrogatory to the extent that it purports to impose any obligation or requirement greater than or different to the obligations or requirements set forth in the Federal Rules of Civil Procedure and/or the applicable rules and orders of this Court.

Defendant Becerra objects to each interrogatory to the extent that it calls for the disclosure of information protected from disclosure by the attorney work-product doctrine, the attorney-client privilege, the deliberative process privilege and/or any other applicable privilege or protection. Should Defendant Becerra disclose any privileged or otherwise protected information in these responses, the disclosure is inadvertent and does not constitute a waiver of the privilege or protection.

Defendant Becerra has not completed the investigation of the facts and issues relating to Plaintiff Zeleny’s claims and has not completed discovery in this action. All of the answers contained herein are based solely upon information and documents which are presently available to, and specifically known by, Defendant Becerra, and the answers disclose only those contentions which presently occur to Defendant Becerra. Further discovery, independent

1 investigation, legal research and analysis may supply additional facts and may lead to additions,  
2 changes, and variations from the answers herein.

3 The following answers are given without prejudice to the right to produce evidence and/or  
4 witnesses or rely on facts which Defendant Becerra may later discover. Defendant Becerra  
5 accordingly reserves the right to change any and all answers herein as additional facts are  
6 ascertained, witnesses identified and legal research is completed. The answers contained herein  
7 are made in good faith in an attempt to supply as much factual information and as much  
8 specification of legal contention as is presently known, and in no way prejudices Defendant  
9 Becerra in relation to further discovery and proceedings.

10 Defendant Becerra incorporates by reference every general objection set forth above into  
11 each specific answer set forth below. A specific response may repeat a general objection for  
12 emphasis or some other reason. The failure to include a general objection in any specific answer  
13 does not waive any general objection to that interrogatory.

14 **INTERROGATORY NO. 1:** State all facts on which You base Your contention, if any,  
15 that California Penal Code § 26350 is constitutional under the Second Amendment, including any  
16 legitimate goals or public interests intended to be served by that statute.

17 [As used in these interrogatories,

18 (a) “You” and “Your” refer to Xavier Becerra as the Attorney General of the State of  
19 California. These interrogatories seek the official position of the State of California;

20 (b) “Second Amendment” means the Second Amendment to the United States  
21 Constitution].

22 **RESPONSE TO INTERROGATORY NO. 1:**

23 Defendant Becerra incorporates by reference the above-stated general objections as though  
24 fully set forth herein. Defendant Becerra objects to this interrogatory on the grounds that it is  
25 vague and overbroad, and unduly burdensome. Moreover, it seeks information irrelevant to  
26 Plaintiff Zeleny’s claims, and not reasonably calculated to lead to the discovery of information  
27 that is relevant to Plaintiff’s claims. Defendant Becerra also objects to this interrogatory on the  
28 grounds that it seeks Defendant Becerra’s contentions regarding the constitutionality of California

Legislature considered including other forms of “speech or expressive conduct” in enacting Penal Code §§ 26375 and 26405, subdivision (r). Thus, Defendant Becerra is unable to respond to this interrogatory.

**INTERROGATORY NO. 9:** Identify all documents bearing upon, supporting, or reflecting the reasons set forth in Your response to the preceding interrogatory.

**RESPONSE TO INTERROGATORY NO. 9:**

Defendant Becerra incorporates by reference the above-stated general objections as though fully set forth herein. Defendant Becerra objects to this interrogatory on the grounds that it is vague and overbroad, and unduly burdensome. Moreover, it seeks information irrelevant to Plaintiff Zeleny’s claims, and not reasonably calculated to lead to the discovery of information that is relevant to Plaintiff’s claims.

Subject to, and without waiving the foregoing objections, Defendant Becerra responds as follows: N/A.

**INTERROGATORY NO. 10:** Does the phrase “authorized participant” as used in California Penal Code §§ 26375 and 26405(r) refer to a participant authorized by a governmental body or agency?

**RESPONSE TO INTERROGATORY NO. 10:**

Defendant Becerra incorporates by reference the above-stated general objections as though fully set forth herein. Defendant Becerra objects to this interrogatory on the grounds that it is vague and overbroad. Moreover, it seeks information irrelevant to Plaintiff Zeleny’s claims, and not reasonably calculated to lead to the discovery of information that is relevant to Plaintiff’s claims.

Subject to, and without waiving the foregoing objections, Defendant Becerra responds as follows: Penal Code §§ 26375 and 26405, subdivision (r) do not include definitions of the phrase “authorized participant.”

However, according to the Legislative history of Penal Code § 26375, that section permits the use of unloaded handguns as an “entertainment props.” (See DOJ 000219) Additionally, the Entertainment Firearms Permit only authorizes the permit holder “to possess firearms loaned to

the permitholder for use solely as a prop in a motion picture, television, video, theatrical, or other entertainment production or event.” (Penal Code § 29500.) Thus, the exceptions set forth in Penal Code §§ 26375 and 26405, subdivision (r) are available only to those using unloaded firearms loaned to them for use as “entertainment props” in a motion picture, television, video, theatrical, or other entertainment production or event.

**INTERROGATORY NO. 11:** If Your answer to Interrogatory No. 10 is in the affirmative, identify the governmental bodies or agencies from which authorization is required?

**RESPONSE TO INTERROGATORY NO. 11:**

Defendant Becerra incorporates by reference the above-stated general objections as though fully set forth herein. Defendant Becerra objects to this interrogatory on the grounds that it is vague and overbroad, and unduly burdensome. Moreover, it seeks information irrelevant to Plaintiff Zeleny’s claims, and not reasonably calculated to lead to the discovery of information that is relevant to Plaintiff’s claims.

Subject to, and without waiving the foregoing objections, Defendant Becerra responds as follows: N/A.

**INTERROGATORY NO. 12:** If Your answer to Interrogatory No. 10 is in the affirmative, state all bases for your contention that the phrase “authorized participant,” as used in California Penal Code §§ 26375 and 26405(r), refers to a participant authorized by a governmental body or agency?

**RESPONSE TO INTERROGATORY NO. 12:**

Defendant Becerra incorporates by reference the above-stated general objections as though fully set forth herein. Defendant Becerra objects to this interrogatory on the grounds that it is vague and overbroad, and unduly burdensome. Moreover, it seeks information irrelevant to Plaintiff Zeleny’s claims, and not reasonably calculated to lead to the discovery of information that is relevant to Plaintiff’s claims.

Subject to, and without waiving the foregoing objections, Defendant Becerra responds as follows: N/A.

1 **INTERROGATORY NO. 13:** If your answer to Interrogatory No. 10 is in the negative,  
 2 state the persons or entities whose authorization is required in order for California Penal Code §§  
 3 26375 and 26405(r) to exempt the carrying of firearms from California Penal Code §§ 26350 and  
 4 26405.

5 **RESPONSE TO INTERROGATORY NO. 13:**

6 Defendant Becerra incorporates by reference the above-stated general objections as though  
 7 fully set forth herein. Defendant Becerra objects to this interrogatory on the grounds that it is  
 8 vague and overbroad. Moreover, it seeks information irrelevant to Plaintiff Zeleny's claims, and  
 9 not reasonably calculated to lead to the discovery of information that is relevant to Plaintiff's  
 10 claims.

11 Subject to, and without waiving the foregoing objections, Defendant Becerra responds as  
 12 follows: The Legislature enacted certain exceptions to the general prohibitions on openly carrying  
 13 firearms.

14 Penal Code § 26375 provides that section 26350 does not apply to, or affect, the open  
 15 carrying of an unloaded handgun by an authorized participant in, or an authorized employee or  
 16 agent of a supplier of firearms for, a motion picture, television or video production, or  
 17 entertainment event, when the participant lawfully uses the handgun as part of that production or  
 18 event, as part of rehearsing or practicing for participation in that production or event, or while the  
 19 participant or authorized employee or agent is at that production or event, or rehearsal or practice  
 20 for that production or event. (Pen. Code, § 26375.) According to the Legislative history, Penal  
 21 Code § 26375 permits the use of unloaded handguns as an "entertainment props." (See DOJ  
 22 000219)

23 Likewise, Penal Code § 26405, subdivision (r) provides that Penal Code § 26400 does not  
 24 apply to, or affect, the carrying of an unloaded firearm that is not a handgun by an authorized  
 25 participant in, or an authorized employee or agent of a supplier of firearms for, a motion picture,  
 26 television, or video production or entertainment event, when the participant lawfully uses that  
 27 firearm as part of that production or event, as part of rehearsing or practicing for participation in  
 28



1 that production or event, or while the participant or authorized employee or agent is at that  
2 production or event, or rehearsal or practice for that production or event.

3 And, Penal Code § 29500 provides that, “Any person who is at least 21 years of age may  
4 apply for an entertainment firearms permit from the Department of Justice. An entertainment  
5 firearms permit authorizes the permit holder to possess firearms loaned to the permitholder for  
6 use solely as a prop in a motion picture, television, video, theatrical, or other entertainment  
7 production or event.” (Added by Stats.2010, c. 711 (S.B. 1080).)

8 **INTERROGATORY NO. 14:** Do California Penal Codes §§ 26375 and 26405(r) require  
9 that the “motion picture, television or video production” or “entertainment event” itself be  
10 authorized in order to exempt participants from California Penal Code §§ 26350 and 26405?

11 **RESPONSE TO INTERROGATORY NO. 14:**

12 Defendant Becerra incorporates by reference the above-stated general objections as though  
13 fully set forth herein. Defendant Becerra objects to this interrogatory on the grounds that it is  
14 vague and overbroad, and unduly burdensome. Moreover, it seeks information irrelevant to  
15 Plaintiff Zeleny’s claims, and not reasonably calculated to lead to the discovery of information  
16 that is relevant to Plaintiff’s claims.

17 Subject to, and without waiving the foregoing objections, Defendant Becerra responds as  
18 follows: Penal Code §§ 26375 and 26405(r) do not address whether the “motion picture,  
19 television or video production” or “entertainment event” itself be authorized in order to exempt  
20 participants from California Penal Code §§ 26350 and 26405. Accordingly, Defendant Becerra is  
21 unable to respond to this interrogatory.

22 **INTERROGATORY NO. 15:** If your response to Interrogatory No. 14 is in the  
23 affirmative, identify all persons or entities whose authorization of the “motion picture, television  
24 or video production” or “entertainment event” is required in order to exempt participants from  
25 California Penal Code §§ 26350 and 26405.

26 **RESPONSE TO INTERROGATORY NO. 15:**

27 Defendant Becerra incorporates by reference the above-stated general objections as though  
28 fully set forth herein. Defendant Becerra objects to this interrogatory on the grounds that it is

vague and overbroad, and unduly burdensome. Moreover, it seeks information irrelevant to Plaintiff Zeleny's claims, and not reasonably calculated to lead to the discovery of information that is relevant to Plaintiff's claims.

Subject to, and without waiving the foregoing objections, Defendant Becerra responds as follows: N/A.

**INTERROGATORY NO. 16:** State all of the bases for Your response to Interrogatory No. 14.

**RESPONSE TO INTERROGATORY NO. 16:**

Defendant Becerra incorporates by reference the above-stated general objections as though fully set forth herein. Defendant Becerra objects to this interrogatory on the grounds that it is vague and overbroad, and unduly burdensome. Moreover, it seeks information irrelevant to Plaintiff Zeleny's claims, and not reasonably calculated to lead to the discovery of information that is relevant to Plaintiff's claims.

Subject to, and without waiving the foregoing objections, Defendant Becerra responds as follows: N/A.

**INTERROGATORY NO. 17:** State all facts supporting your interpretation of California Penal Code §§ 26375 and 26405(r).

**RESPONSE TO INTERROGATORY NO. 17:**

Defendant Becerra incorporates by reference the above-stated general objections as though fully set forth herein. Defendant Becerra objects to this interrogatory on the grounds that it is vague and overbroad, and unduly burdensome. Moreover, it seeks information irrelevant to Plaintiff Zeleny's claims, and not reasonably calculated to lead to the discovery of information that is relevant to Plaintiff's claims.

Subject to, and without waiving the foregoing objections, Defendant Becerra responds as follows: Defendant Becerra has not issued an interpretation of California Penal Code §§ 26375 and 26405, subdivision (r). However, the California Department of Justice does possess documents that are related to firearms generally. See and DOJ 0001282-DOJ 001312.



1 Dated: April 3, 2019

Respectfully submitted,

2  
3 XAVIER BECERRA  
Attorney General of California  
4 ANTHONY R. HAKL  
Supervising Deputy Attorney General

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6  
7 NOREEN P. SKELLY  
Deputy Attorney General  
8 *Attorneys for Defendant Attorney General*  
*Xavier Becerra*

**DECLARATION OF SERVICE BY OVERNIGHT COURIER**

Case Name: **Zeleny, Michael v. Edmund G. Brown, et al.**

No.: **3:17-cv-07357 RS (NC)**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550.

On April 3, 2019, I served the attached **DEFENDANT ATTORNEY GENERAL XAVIER BECERRA'S RESPONSES TO PLAINTIFF MICHAEL ZELNY'S FIRSTS SET OF INTERROGATORIES** by placing a true copy thereof enclosed in a sealed envelope with the **Golden State Overnight**, addressed as follows:

David William Affeld  
Damion D. D. Robinson  
Affeld Grivakes LLP  
2049 Century Park East, Suite 2460  
Los Angeles, CA 90067  
Tel: (310) 979-8700  
Fax: (310) 979-8701  
Email: [dwa@agzlaw.com](mailto:dwa@agzlaw.com)  
[dr@agzlaw.com](mailto:dr@agzlaw.com)  
*Attorneys for Plaintiff*

Todd H. Master  
Howard Rome Martin & Ridley LLP  
1900 O'Farrell Street, Suite 280  
San Mateo, CA 94403  
Tel: (650) 365-7715  
Fax: (650) 364-5297  
Email: [tmaster@hrmrlaw.com](mailto:tmaster@hrmrlaw.com)  
*Attorneys for Defendants City of Menlo Park  
and Dave Bertini*

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on April 3, 2019, at Sacramento, California.

Eileen A. Ennis  
Declarant

  
Signature